

summary determination in his favor upon all or any part of the issues to be determined in the investigation. Counsel or other representatives in support of the complaint may so move at any time after 20 days following the date of service of the complaint and notice instituting the investigation. Any other party or a respondent may so move at any time after the date of publication of the notice of investigation in the FEDERAL REGISTER. Any such motion by any party in connection with the issue of permanent relief, however, must be filed at least 30 days before the date fixed for any hearing provided for in § 210.36(a)(1). Any motion for summary determination filed in connection with the temporary relief phase of an investigation must be filed on or before the deadline set by the presiding administrative law judge.

(b) *Opposing affidavits; oral argument; time and basis for determination.* Any nonmoving party may file opposing affidavits within 10 days after service of the motion for summary determination. The administrative law judge may, in his discretion or at the request of any party, set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

(c) *Affidavits.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The administrative law judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary determination is made and supported as provided in this section, a party opposing the motion may not rest upon

the mere allegations or denials of the opposing party's pleading, but the opposing party's response, by affidavits, answers to interrogatories, or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue of fact for the evidentiary hearing under § 210.36(a)(1) or (2). If the opposing party does not so respond, a summary determination, if appropriate, shall be rendered against the opposing party.

(d) *Refusal of application for summary determination; continuances and other orders.* Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the administrative law judge may refuse the application for summary determination, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is appropriate, and a ruling to that effect shall be made a matter of record.

(e) *Order establishing facts.* If on motion under this section a summary determination is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the administrative law judge, by examining the pleadings and the evidence and by interrogating counsel if necessary, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge shall thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the investigation as are warranted. The facts so specified shall be deemed established.

(f) *Order of summary determination.* An order of summary determination shall constitute an initial determination of the administrative law judge.

§ 210.19 Intervention.

Any person desiring to intervene in an investigation or a related proceeding under this part shall make a written motion. The motion shall have attached to it a certificate showing that the motion has been served upon

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each party to the investigation or related proceeding in the manner described in § 201.16(b) of this chapter. Any party may file a response to the motion in accordance with § 210.15(c) of this part, provided that the response is accompanied by a certificate confirming that the response was served on the proposed intervenor and all other parties. The Commission, or the administrative law judge by initial determination, may grant the motion to the extent and upon such terms as may be proper under the circumstances.

§ 210.20 Declassification of confidential information.

(a) Any party may move to declassify documents (or portions thereof) that have been designated confidential by the submitter but that do not satisfy the confidentiality criteria set forth in § 201.6(a) of this chapter. All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the presiding administrative law judge, or if the investigation is not before a presiding administrative law judge, by the chief administrative law judge or such administrative law judge as he may designate.

(b) Following issuance of a public version of the initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 or an initial determination that would otherwise terminate the investigation (if adopted by the Commission), the granting of a motion, in whole or part, to declassify information designated confidential shall constitute an initial determination, except as to that information for which no submissions in opposition to declassification have been filed.

§ 210.21 Termination of investigations.

(a) *Motions for termination.* (1) Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 for an order to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, or for good cause other than the grounds listed in paragraph (a)(2) of

this section. The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

(2) Any party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement, including an agreement to present the matter for arbitration, or a consent order, as provided in paragraphs (b), (c) and (d) of this section.

(b) *Termination by Settlement.* (1) An investigation before the Commission may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement. A motion for termination by settlement shall contain copies of the licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion.

(2) The motion and agreement(s) shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents. Notice of the initial determination and the agreement shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate. If the Commission's final disposition of the initial determination results in termination of the investigation in its entirety, a notice will be published in the